

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ANDREW ALBERT, individually and as representative of  
a Class of Participants and Beneficiaries on Behalf of the  
Oshkosh Corporation and Affiliates Tax Deferred  
Investment Plan,

Plaintiff,

v.

Case No. 20-C-901

OSHKOSH CORPORATION, et al.,

Defendants.

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**ORDER**

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Plaintiff Andrew Albert, a participant in the Oshkosh Corporation and Affiliates Tax Deferred Investment Plan, brings this case as a proposed class action under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(2), against Defendants Oshkosh Corporation, the Board of Directors of the Oshkosh Corporation, the Administrative Committee of the Oshkosh Corporation and Affiliates Employee Benefit Plans, and John Does 1–30. Defendants filed a motion to dismiss the amended complaint on October 5, 2020.

On June 1, 2021, Plaintiff filed a notice of supplemental authority, alerting the Court to a decision recently issued by the United States District Court for the Northern District of Illinois which Plaintiff finds relevant to the arguments raised by Defendants in their motion to dismiss. Defendants filed a motion to strike asking the Court to strike the Notice of Supplemental Authority for failure to comply with this District's local rules. Local Rule 7(k) states:

If pertinent and significant authorities relevant to an issue raised in a pending motion come to a party's attention after a party's final brief on the motion has been filed, the party may file a Notice of Supplemental Authority, attaching the new authority,

without leave of the court. The Notice of Supplemental Authority may not contain any argument but may identify the page or section in the filed briefs to which the authority is relevant.

Civil L.R. 7(k) (E.D. Wis.). The Court finds that the argument contained in Plaintiff's notice of supplemental authority violated the local rule. Rather than strike Plaintiff's notice, the Court will not consider Plaintiff's additional argument contained in the notice in deciding the motion to dismiss. Accordingly, Defendants' motion to strike the notice of supplemental authority (Dkt. No. 42) is **DENIED**.

**SO ORDERED** at Green Bay, Wisconsin this 2nd day of September, 2021.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge